

## NATO intervention in Kosovo in light of Security Council actions and International Law

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### Abstract

The horrors of World War Two made it universally clear that the world cannot progress without general respect for human rights. Still, the need for humanitarian intervention arose several times before 1999, but international political and military organisations including the UN, were either late or hesitant to prevent genocides or other related human catastrophes worldwide. The NATO intervention in Kosovo, however, marked the beginning of the new era in international relations. The facet of this intervention in view of legality is the topic of this paper. The aim of this study, above all, is to analyze the Security Council actions, debates and resolutions concerning situation in Kosovo, and the level of impact that the military operation had in international law (in particular) and international relations (in general). The study uses many authentic documents issued by the United Nations Security Council itself and other material related to the theme in order to develop an argument on the points raised. Throughout, this research paper has attempted to answer numerous issues related to the topic and offer a balanced view on the all the themes examined. Several but distinct points raised focus on relevant core subjects, discuss the challenges and opportunities of the humanitarian intervention and offer recommendations regarding the future of such operation for the well being of the humanity.

**Keywords:** NATO, Kosovo, Security Council, International Law and International Relations

## 1. Introduction

It is widely acknowledged that human rights, democracy, and the rule of law are in every person's and every state's self interest and, in addition, are indispensable and fundamental pillars for building our common house and decent environment. The international community has, in fact, committed itself in the post-Holocaust world to a culture of human rights, which outlaws genocide, torture, and massive human rights abuses, but these principles that benefit humanitarianism tend to be incompatible with the principles of sovereignty and non-intervention.

This study explains the factors that led NATO to undertake military action against former Yugoslavia (Serbia and Montenegro) and the issues surrounding the legality of this war in context of intervention. This military operation is examined through the conduct of United Nations Security Council prior, during and after the military operation. The Security Council as the most dominant organ of the United Nations was set up to play the leading role in "world forum for managing threats to international order...[equipped] with primary responsibility for international peace and security (Article 24)"<sup>1</sup>. International order, peace and security on the other hand is managed by International Law that can be defined as a set of rules and principles of universal application that concern the behaviour of States as well as international organizations in their relations with each other, but also with private individuals and transnational corporations.<sup>2</sup>

Kosovo<sup>3</sup>, (the territory that triggered the intervention), is the disputed region between Kosovo's Albanian majority and Serbia, and was an autonomous federal unit of Yugoslavia until 1989, when it was stripped of its autonomy by the former dictatorship regime of Slobodan Milosevic<sup>4</sup> whose actions were the main contributors to the disintegration of Yugoslavia. The 1999 war in Kosovo, (and also the other Balkan conflicts of the 1990s), are generally believed to be a direct consequence of long rooted undemocratic procedures and injustices that overturned the balance both in democracy and nationalism, and gave impetus to greater nationalist pretensions. The war in

<sup>1</sup> Bourantonis D., *The History and Politics of UN Security Council Reform* (Routledge, Oxon, 2005), p.3

<sup>2</sup> Verma S. K. *An Introduction to Public International Law* (PHI Learning Pvt., New Delhi, 1998) pp.1-19

<sup>3</sup> Kosovo declared independence on 17 February 2008. It has more than 100 recognitions from all parts of the world but it is not yet a UN member. See KosovoThanksYou, *Who recognized Kosovo*, available from: <http://www.kosovothanksyou.com/> [Accessed July 30, 2103]

<sup>4</sup> O'Neill W., G., *Kosovo: An Unfinished Peace* (Lynne Rienner Publishers, Colorado, 2002), p.21

Kosovo and the ethnic cleansing of the Kosovar Albanians from their country<sup>5</sup> that followed triggered a vital legal debate centred on the legality of the humanitarian intervention.

## 2. UN Security Council activities related to Kosovo prior to NATO intervention

The tense situation in former Yugoslavia in the early 1990s aggravated the situation in Kosovo. The UN nations were alarmed but were often severely restricted to present a united front of world despite being provided with evidence that grave atrocities were occurring in Kosovo. The divided UN Security Council was a stumbling block to authorise use of force to prevent massive crimes in Kosovo. Indeed, this was the main reason why three permanent members of the Security Council (the USA, UK, and France) unable to get the backing of the two other Security Council members (Russia and China) decided to bypass the Council and go alone in order to save the world from similar awful scenes that the world saw during the Bosnian genocide,<sup>6</sup> occurring in Kosovo's neighbourhood.

The deterioration of the situation in Kosovo at various stages prompted discussions within the UN Security Council, but the Resolutions (even though draft agreements were difficult to be achieved due to large division within permanent members) were the only means to try and persuade Serbian (then Yugoslav government) to abide to Council's decisions. There were a number of UN Resolutions adopted during the 1990s starting from 1993, when then Yugoslavia refused to allow special CSCE missions to be deployed in Kosovo.<sup>7</sup> As a result, the UNSC in its Resolution 855(1993) explained the importance of CSCE (now called OSCE) for the region when it noted that

"...CSCE missions of long duration are an example of preventive diplomacy...[and called] upon the authorities in the Federal Republic of Yugoslavia (Serbia and Montenegro) to reconsider their refusal to allow the continuation of the activities of the CSCE missions in Kosovo..."<sup>8</sup>

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<sup>5</sup> Human Rights Watch, *Rape as a weapon of ethnic cleansing* (New York, Human Rights Watch, March 2000)

<sup>6</sup> International Criminal Tribunal for the former Yugoslavia ruled that Srebrenica was an act of genocide. See UN International Criminal Tribunal for the former Yugoslavia, *Facts about Srebrenica*, available from: [http://www.icty.org/x/file/Outreach/view\\_from\\_hague/jit\\_srebrenica\\_en.pdf](http://www.icty.org/x/file/Outreach/view_from_hague/jit_srebrenica_en.pdf) [Accessed July 25, 2013]

<sup>7</sup> UN Security Council, *RESOLUTION 855* (1993) in <http://www.un.org/peace/kosovo/93sc855.htm> [Accessed on July 30, 2013]

<sup>8</sup> *ibid*

However, when the UN commanders stationed in Bosnia asked NATO to intervene in order to protect the peacekeepers,<sup>9</sup> then this marked a new development not only for NATO itself but for the region as well. The world and United Nations, at this point sensed that the war in ex-Yugoslavia is running out of control with widespread crimes against humanity culminating with the Srebrenica genocide in July 1995.<sup>10</sup> Even though the Dayton Accord marked the end of Bosnian war through political and military means,<sup>11</sup> still the images seen in Bosnia were vivid in the eyes and mind of world community.

The Bosnia war had an important impact on the international view of Kosovo conflict. The rules of game changed, and the international decision makers sensed that diplomacy alone may not play a decisive role in stopping the Kosovo conflict, but realized that it is not going to be easy to apply the military means in the face of strong opposition at the Security Council. As the situation in Kosovo deteriorated during the early 1998, the Council debated the situation and on March 31, 1998 adopted the resolution 1160 (1998) imposing arms embargo against then Yugoslavia due to "the use of excessive force by Serbian police forces against civilians and peaceful demonstrators in Kosovo..."<sup>12</sup>

Instead of getting better, the situation deteriorated further to a degree that it became untenable which provoked fresh debates at UNSC and consequently within two months the Security Council approved three Resolutions against Yugoslavia. In the first Resolution 1199(1998) adopted in September 23, 1998 the UNSC was

"Gravely concerned at the recent intense fighting in Kosovo and in particular the excessive and indiscriminate use of force by Serbian security forces and the Yugoslav Army which have resulted in numerous civilian casualties ...[and] by the flow of refugees into northern Albania,

<sup>9</sup> Gordon M.R., CONFLICT IN THE BALKANS: NATO; Modest Air Operation in Bosnia Crosses a Major Political Frontier available from: <http://www.nytimes.com/1994/04/11/world/conflict-balkans-nato-modest-air-operation-bosnia-crosses-major-political.html> [Accessed July 29, 2013]

<sup>10</sup> UN International Criminal Tribunal for the former Yugoslavia, *Facts about Srebrenica*, [http://www.icty.org/x/file/Outreach/view\\_from\\_hague/jit\\_srebrenica\\_en.pdf](http://www.icty.org/x/file/Outreach/view_from_hague/jit_srebrenica_en.pdf) [Accessed July 25, 2013]

<sup>11</sup> Cousens, E.M., and Cater C., K., *Toward Peace in Bosnia: Implementing the Dayton Accords* (Lynne Rienner Publishers, Boulder, 2001), p.27

<sup>12</sup> UN Security Council, RESOLUTION 1160 (1998) available from: <http://www.un.org/peace/kosovo/98sc1160.htm> [Accessed on July 30, 2013]

Bosnia and Herzegovina and other European countries as a result of the use of force in Kosovo..."<sup>13</sup>

The following Resolution 1203(1998) that ensued, tackled the verification of agreements reached and compliance with the Resolution 1199, "stressing the importance of proper coordination of humanitarian initiatives"<sup>14</sup>, The final Resolution prior to NATO intervention, the Resolution 1207(1998) called among others upon the authorities of both sides in the Kosovo conflict "to cooperate fully with the Prosecutor in the investigation of all possible violations"<sup>15</sup>.

### 3. The NATO intervention: Evolution and Security Council

During the Cold War the humanitarian intervention was not considered to be legitimate practice, but there has been a major and, to a large extent, a necessary shift since the early 1990s. After initial success in humanitarian military operations to rescue the Kurds in northern Iraq, in the aftermath of the 1991 Gulf War, the lack of success in the case of Bosnia and even more in the Rwandan conflict, has given the international community a mood of pessimism and moral cynicism. However, in the case of Kosovo, where by mid- March 1999 there was an alarming humanitarian catastrophe in which thousands were killed<sup>16</sup> and hundreds of thousands were homeless,<sup>17</sup> the Kosovo crisis was to be another 'test' for the global powers to act in order to avoid the awful repetitions of still fresh memories of Bosnia and Rwanda.

In Kosovo case, finally, the same states that looked on while around a million Tutsi were slaughtered in a genocide, dropped bombs on Serbia so that no one could say they had done nothing, and even more, to stop further atrocities by the Serbian army. Still, without the sanction of the Security Council on March 24<sup>th</sup>, 1999, NATO's aircrafts began to bomb Serbian targets practically in the whole of Yugoslavia.<sup>18</sup> NATO's decision to attack Yugoslavia marked a shift in the principles of the alliance. Before March 24<sup>th</sup>, 1999 NATO was to cater for the defensive purposes of the Western alliance against any

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<sup>13</sup> UN Security Council, RESOLUTION 1199 (1998) available from: <http://www.un.org/peace/kosovo/98sc1199.htm> [Accessed on July 30, 2013]

<sup>14</sup> UN Security Council, RESOLUTION 1203 (1998) available from: <http://www.un.org/peace/kosovo/98sc1203.htm> [Accessed on July 30, 2013]

<sup>15</sup> UN Security Council, RESOLUTION 1207 (1998) available from: <http://www.un.org/peace/kosovo/98sc1207.htm> [Accessed on July 30, 2013]

<sup>16</sup> O'Neill W., G., *Kosovo: An Unfinished Peace* (Lynne Rienner Publishers, Colorado, 2002), p.27

<sup>17</sup> Independent International Commission in Kosovo. *Kosovo Report: Conflict, international response, lessons learned*, (Oxford University Press, New York, 2000), pp.90-91

<sup>18</sup> "Conflict in the balkans: the overview; nato opens broad barrage against serbs as clinton denounces yugoslav president", *New York Times*, (25 March 1999) p.6

possible outside military intervention. Alexandra Gheciu in her research argues that NATO's post-Cold War focus was centred on spreading Western-based norms to a broad area of Europe.<sup>19</sup>

The attack on Yugoslavia was in fact the first against a sovereign nation in NATO's fifty years of existence. The Western powers put the blame for it squarely on the Serbian leader's action against humanity. In fact, NATO's Secretary General Javier Solana emphasized "clear responsibility for the air strikes lies with President Milosevic who refused to stop his violent action in Kosovo and has refused to negotiate in good faith"<sup>20</sup>. Furthermore, NATO statement affirmed that "the crisis in the Federal Republic of Yugoslavia is a challenge to the values that NATO has successfully defended for the past 50 years: democracy, individual liberty and the rule of law".<sup>21</sup>

The NATO intervention alerted Russia, and the latter requested a Security Council meeting to discuss the latest developments and asking immediate halt to air attacks. The Russian Foreign Minister, at that time, Igor Ivanov was furious with NATO bombing of Yugoslavia and said "Those who have unleashed the aggression against Yugoslavia must be prosecuted under criminal law".<sup>22</sup> However advocates of the NATO attack against Yugoslavia declared a diplomatic victory at the UN when the Russian resolution requesting the strikes to be ended, at the Security Council was rejected, by a large margin, 12 to 3, (only China and Namibia did vote in favour of Russia).<sup>23</sup> The Slovenien Representative at the time, Danilo Türk, made an interesting comment during this debate at Security Council, on March 25<sup>th</sup>, 1999. He noted that halting military intervention is not justifiable at this point, as Security Council along with a number of its resolutions expressed grave concerns about peace and security in the region, and moreover he remarked

<sup>19</sup> Gheciu, Alexandra, 2007, "Security Institutions as Agents of Socialization: NATO and the 'New Europe,'" in Checkel, J. T. (Eds) *International Institutions and Socialization in Europe*, (Cambridge University Press, New York, 2007) pp.171-207

<sup>20</sup> Clines F, "Conflict in the balkans: the overview; nato opens broad barrage against serbs as clinton denounces yugoslav president", New York Times,( 25 March 1999) p.6

<sup>21</sup> NATO Homepage, (April 23, 1999) Statement on Kosovo, on <http://www.nato.int/docu/pr/1999/p99-062e.htm>, [Accessed on May 4, 2013]

<sup>22</sup> Clines F. ., Myers S. L.,*Conflict In The Balkans: The Overview; Nato launches daytime strike; Milosevic resisting fiercely; Two Serb jets are shot down* available from: <http://www.nytimes.com/1999/03/27/world/conflict-balkans-overview-nato-launches-daytime-strike-milosevic-resisting.html?pagewanted=all&src=pm> [Accessed July 28, 2013]

<sup>23</sup> ibid

“According to the United Nations Charter, the Security Council had the primary, but not exclusive responsibility for maintaining international peace and security.”<sup>24</sup>

The war situation increased casualties and by around mid May 1999 the UN registered about 780,000 refugees,<sup>25</sup> which prompted the Security Council to meet and approve the new Resolution 1239(1999) on Kosovo refugee assistance and express “grave concern at the humanitarian catastrophe in and around Kosovo, Federal Republic of Yugoslavia, as a result of the continuing crisis”.<sup>26</sup> During the seventy-eight days of the air campaign, Serbian and Yugoslav military, police, and paramilitaries drove out more than 850,000 ethnic Albanians from Kosovo, internally displacing several hundred thousand more and terrorized the civilian population.<sup>27</sup>

Finally, by June 1999 Yugoslav government capitulated and agreed to Western demands that subsequently led to the approval of the UN Security Council Resolution 1244(1999). The latter resolution, among others called for

“[v]erifiable withdrawal from Kosovo of all [Yugoslav] military, police and paramilitary forces according to a rapid timetable... [and][d]eployment...of effective international civil and security presences.”<sup>28</sup>

The Resolution 1244 that also authorized establishing provisional political framework for self-governing democratic institutions of Kosovo, laid the foundations for free and democratic election. The circumstances created, led to the creation of self-governing institutions, culminating with independence

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<sup>24</sup> UN Security Council debate , *Security Council rejects demand for cessation of use of force against Federal Republic of Yugoslavia* Press Release SC/6659 3989th Meeting (AM) 26 March 1999 available from: <http://www.un.org/News/Press/docs/1999/19990326.sc6659.html> [Accessed July 29, 2013]

<sup>25</sup> Krieger H., *The Kosovo Conflict and International Law: An Analytical Documentation 1974-1999* (Cambridge University Press, Cambridge, 2001)p.70

<sup>26</sup> UN Security Council, *RESOLUTION 1239 (1998)* available from: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N99/143/75/PDF/N9914375.pdf?OpenElement> [Accessed on July 30, 2013]

<sup>27</sup> Independent International Commission in Kosovo. *Kosovo Report: Conflict , international response, lessons learned*, (Oxford University Press, New York, 2000), p.90-91

<sup>28</sup> UN Security Council, *RESOLUTION 1244 (1999)* available from: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N99/172/89/PDF/N9917289.pdf?OpenElement> [Accessed July 27, 2013]

declaration on February 17, 2008 that subsequently attracted widespread recognition worldwide.<sup>29</sup>

#### 4. NATO intervention and International Law

While examining the Kosovo factor in light of the discussed legal system, inevitably, two questions surface; *is it legal to attack a sovereign nation without Security Council resolution* and more importantly, *is it legal to allow an imminent catastrophe having Rwandan and Bosnian tragedy a case in point* that could have been averted, had UN Security Council looked passionately at the calamity itself. One must bear in mind that the United Nations is created following the severe consequences of WWII devastations and it aimed to prevent similar catastrophes in the future. The United Nations values human lives; however, disunity within the Security Council members often distorts its human-caring mission.

The NATO intervention in Kosovo had, undoubtedly, a great impact on international relations and respective international law. Humanitarian intervention doctrine is analysed by various scholars of international relations and their views often differ. Julia Holzgreffe in her study raises her voice in support of humanitarian interventions by elaborating the Rwandan genocide and non-intervention by the international community to prevent genocide from happening. She remarks that

“In short three months, as many as 1 million Tutsis were shot, burned, starved, tortured, stabbed, or hacked to death. The international community did nothing to stop the Rwandan genocide...what measures should be taken to prevent similar catastrophes in the future?”<sup>30</sup>

It is indeed, unspeakably appalling to comprehend how could the international community ignore atrocities at that scale by side-lining itself. The NATO intervention in Kosovo with no prior Security Council approval however, provoked among others also the debates about the ability of UN to have control in issues related to global peace and security. The United Nations Charter maintains that all non-defensive military actions need a Security Council approval (by supermajority), that includes the five permanent members

<sup>29</sup> Kosovo Thanks You, Who recognized Kosova, available from: <http://www.kosovothankyou.com/> [Accessed July 30, 2103]

<sup>30</sup> Holzgreffe J. L *The humanitarian Intervention debates*, p.17 in : Holzgreffe J. L, and Keohane R.O Eds., *Humanitarian Intervention: Ethical, Legal and Political Dilemmas* (Cambridge University Press, Cambridge, 2003)



of the Council.<sup>31</sup> On the other hand, UN Charter has serious concern about human rights and in its preamble maintains " We the peoples of the United Nations determined ... to save succeeding generations from the scourge of war..."<sup>32</sup> Confronting the Kosovo issue between two conflicting angles, *Security Council principles* versus *International Human Rights and Humanitarian Law*, is rather inconvenient as one position must sacrifice the other.

Analyzing and understanding the International Human Rights Law and International Humanitarian Law is crucial to focus on the objectives of this study. The International Human Rights Law with its origins from the 1948 Universal Declaration of Human Rights

"...lays down obligations which States are bound to respect. By becoming parties to international treaties, States assume obligations and duties under international law to respect, to protect and to fulfil human rights."<sup>33</sup>

The International Humanitarian Law, on the other hand, deals mainly with binding rules in armed conflict situations. Joan Policastrì and Sergio Stone define the International Humanitarian Law as

"...the binding rules and customs that govern armed conflict between nations, civil war combatants, and conflicts among states and non-state belligerents., the law of war, or law of armed conflict, the term international humanitarian law has gained currency since the early 1960s...The primary sources are international conventions, customary law, judgments of international tribunals and domestic courts, and state practice...[and] constitute "Hague Law," regarding the conduct of hostilities, and "Geneva Law," which protects the victims of war."<sup>34</sup>

Since 1999, the Humanitarian Intervention, a new doctrine, derived from International Humanitarian Law is being applied, loosening the concept of sovereignty and taking the *Responsibility to Protect* the civilians.<sup>35</sup> One,

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<sup>31</sup> U.N. Charter Article. 27, Chapter. VII and VIII in United Nations, *Charter of the United Nations*, available from: <http://www.un.org/en/documents/charter> [Accessed July 25, 2013]

<sup>32</sup> Ibid Preamble

<sup>33</sup> United Nations Homepage, The foundation of international human rights law available from: <http://www.un.org/en/documents/udhr/index.shtml> [Accessed July 25, 2013]

<sup>34</sup> The American Society of International Law, Policastrì J., and Stone S., *International Humanitarian Law* available from: <http://www.asil.org/erg/?page=ihuml#id.pfy87dsrjx11> [Accessed July 25, 2013]

<sup>35</sup> ibid

therefore, senses that current international legal system is evolving. The existing human rights and humanitarian law proved, indeed, insufficient to prevent Rwandan, Bosnian, and other similar tragedies from occurring worldwide. All in all, with Srebrenica genocide, in particular, and other related Serbian crimes in Bosnia,<sup>36</sup> fresh in mind to all, prompted the Western powers to view Kosovo conflict with urgent need to act and avert similar catastrophe. While the Humanitarian Intervention may be welcomed, the fairness of intervention is at stake and much more work has to be done for humanitarian intervention to gain the deserved reputability.

Besides the humanitarian intervention, a similar doctrine but with a new name, the liberal interventionism, was introduced as new practical theory in 1999, by former British Prime Minister Tony Blair. During his Chicago speech, Mr Blair defined what later became known internationally as the doctrine of liberal interventionism.<sup>37</sup> The Liberal interventionism is foreign policy doctrine that justifies liberal states' military and humanitarian aid intervention in other sovereign states in order to reach liberal objectives.<sup>38</sup>

Hedley Bull, a liberal realist explains that order among the countries and justice within them, were often mutually exclusive, where pursuing one tended to exclude the other. In his master piece, *The Anarchical society: A study of order in World Politics*, Bull emphasizes that humanitarian intervention should not be permitted in the face of disagreement about what constitutes extreme human rights violations in international society.<sup>39</sup> However, theorists who express solidarity with forcible intervention in exceptional cases of human suffering do not stand in line with Bull's arguments. The supporters of interventionist theory<sup>40</sup> favour the idea to use force in the regions where the suffering of humans from violence has reached the highest peak, arguing that there is a legal right and moral duty to humanitarian intervention because the UN Charter commits states to protect fundamental human rights. In addition, there

<sup>36</sup> The Independent, (February 8, 1993) *Bosnia War Crimes: 'The rapes went on day and night': Robert Fisk, in Mostar, gathers detailed evidence of the systematic sexual assaults on Muslim women by Serbian 'White Eagle' gunmen* available from: <http://www.independent.co.uk/news/world/europe/bosnia-war-crimes-the-rapes-went-on-day-and-night-robert-fisk-in-mostar-gathers-detailed-evidence-of-the-systematic-sexual-assaults-on-muslim-women-by-serbian-white-eagle-gunmen-1471656.html> [Accessed July 25, 2013]

<sup>37</sup> The Independent Newspaper (November 24, 2008), David Miliband: 'We must restore belief in the efficacy of liberal interventionism' available from: <http://www.independent.co.uk/voices/commentators/david-miliband-we-must-restore-belief-in-the-efficacy-of-liberal-interventionism-1032226.html> [Accessed on May 10, 2013]

<sup>38</sup> *ibid*

<sup>39</sup> Bull, H., *The Anarchical society: A study of order in World Politics* (Macmillan, London, 1977)

<sup>40</sup> Interventionism refers to a practice of intervention in the affairs of another sovereign country.

is a right of humanitarian intervention in customary international law.<sup>41</sup> Therefore, theory of interventionism tends to be a tricky subject for discussion for the scholars of international relations, as many tend to agree to humanitarian justice over the norms of sovereignty and non-intervention.

The theory of interventionism is also backed by Christopher Greenwood, a law professor at the London School of Economics (LSE), who argued that intervention in Kosovo was lawful. Greenwood maintained that since the allied intervention in northern Iraq to save the Kurds in 1991 was accepted as legitimate, although undertaken without explicit authorization by the Security Council, the defeat of the Security Council's condemnation of NATO's air strikes against Serbia (remarked earlier) amounted to the approval of the military action.<sup>42</sup> Elaborating further on the issue, Greenwood noted that as there was every indication that a catastrophe was occurring in Kosovo, which was a potential threat to global peace, and as there was a general consensus among the international community as to which side was responsible for this, made NATO bombing legal.<sup>43</sup>

However, from the point of view of international relations, the expression of humanitarian sentiments by the West regarding the case of Kosovo was viewed to be a product of changing historical and social processes. For instance, the opponents of interventionism or liberal interventionism, the classical realists<sup>44</sup> oppose the idea of states intervening for humanitarian purposes, by arguing that countries do not really intervene for purely humanitarian, but for ulterior reasons and therefore states should never undertake such steps.<sup>45</sup> Against the interventionist approach is also Andrew Fear, who, in his study in the book named *Kosovo: The Politics of Delusion* notes:

“NATO's marginalization of the UN is an act in defiance of, not in accordance with, the will of the international community, the majority of whom are opposed to its actions. It has set back immeasurably any chance that a distinct international forum will

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<sup>41</sup> Arend, A.C. and Beck, R. J., *International Law and the use of force*, (Routledge, London, 1993), pp. 132-137

<sup>42</sup> “When they don't fit together”, *The Economist*, (Vol. 351, No.8113, 3 April 1999), p.18

<sup>43</sup> *ibid*

<sup>44</sup> Classical realism argues that the state is totally sovereign and is the primary unit of analysis in international relations. This international relations theory is associated with the famous philosopher Niccolò Machiavelli.

<sup>45</sup> Baylis, J. and Smith, S. *The Globalization of World Politics*, (Oxford University Press, New York, 1998), p.394

emerge, in particular one that could make binding decisions against the self-perceived interests of the USA."<sup>46</sup>

David Wippman, on the other hand, in his research titled "*Kosovo and the Limits of International Law*" disregards such a view and claims that intervention was lawful for a number of reasons. He argues that Serbia's deeds in the region were a clear threat to peace and security, explicitly recognized in several Security Council adopted resolutions. In addition, Wippman remarks that NATO intervened only after Serbia's repeated failure to abide Security Council adopted resolutions, as broad diplomatic efforts resulted in failure. Furthermore, Yugoslav action prior to intervention led to humanitarian catastrophe and this situation rendered to NATO triggered intervention that, after all, was not NATO's self interest but anxiety regarding regional stability. Finally he maintains that NATO intervention enjoyed a great international support that was also reflected during the failure of Russia request to get approval for immediate halt of the bombing, alongside Security Council Resolutions that encouraged attainment of political settlement at the end of bombing campaign.<sup>47</sup>

The Russians, who embraced the principle of non-interference in the affairs of a sovereign country, hence, supporting the classical realists' theory, were deeply shocked by the Western air strikes on Yugoslavia.<sup>48</sup> Russia being traditionally the ally of Serbia, immediately suspended their cooperation with the NATO alliance, besides calling an emergency meeting of the UN Security Council aiming to halt the military operation.<sup>49</sup> Russia has always tried to keep its influence in the Balkans by holding on to every friendly state in this region.

All in all, the practice of the military interventionism has changed the traditional meaning of sovereignty. The Westphalian sense of sovereignty, established in the mid- seventeenth century, signified the right of a country to control its internal affairs without external interference.<sup>50</sup> Since the beginning of the 1990s, the principle of popular sovereignty has been added. In the new world order this means that sovereignty, which is derived from the people, can be executed on behalf and for the people and can be revoked if it is practiced

<sup>46</sup> Fear, A., Looking neither forward nor back: NATO 's Balkan adventure, Kosovo, p.94 in Waller, M., Drezov, K., and Gökay, B., (eds) *Kosovo: The Politics of Delusion* (Frank Cass Publishers: London, 2001)

<sup>47</sup> Wippman D. Kosovo and the Limits of International Law, *Fordham International Law Journal*, (Vol 25, Issue 1 Art 5, 2001), pp. 131-134

<sup>48</sup> "Moscow Recalls NATO Delegate in Protest", *Washington Post*, (25 March 1999), A31

<sup>49</sup> *ibid*

<sup>50</sup> Baylis, J. and Smith, S., *The Globalization of World Politics*, ( Oxford University Press, New York, 1998), pp. 19-21

against the people. This implies that if a particular ethnic group is too weak to stand up against violations of its right to self-determination, then the international community has the right to intervene.

## 5. The impact of intervention in International Relations

The NATO bombing of Yugoslavia in context of international relations raised the question of interest, whether the West was acting out of some self-interest or really carrying out a moral duty as it claimed. When focusing on primary interests, Kosovo, in realistic and rational terms is unlikely to be highly beneficial for the West. But probably the real concerns that stimulated the Western public, apart from humanitarian reasons, were fears of the destabilization of the region, which might have a 'domino effect' on neighbouring countries and possibly beyond. Western politicians, in fact, wanted to prevent the massive migration flows. They feared that the conflict would spill over from Kosovo to Macedonia (which it did in 2001), and then maybe even to Greece and Turkey.

However, one can argue that, after NATO's victory, a precedent has been set for the alliance's self-mandated intervention in other conflicts. The Kosovo war can be interpreted to have been a test case of the future role of NATO as the armed wing of the West, cloaked in the rhetoric of a new international moral consensus. In addition, what made NATO's air strikes successful is that the campaign fulfilled the goal of zero casualties among the Allies, which is quite normal for a parade, but not in a war.<sup>51</sup>

As far as the question of winners and losers is concerned a final conclusion seems as yet premature. However, in the terms of international relations, Russia seems to have lost face, somewhat. The Kosovo war had, in fact, a negative effect on Russian foreign policy. It caused some immediate damage to Russia's relationship with the West with its initial opposition. Russia was to a large extent disturbed, and her options for any support (besides emotional) of their fellow ally, Serbia, were largely limited. This was likely to make it slide into isolationism. With its weak economy and struggle to gain additional loans from the International Monetary Fund (IMF), Russia could not afford deterioration of relations with the West. In the Kosovo crisis, what Russians expected from the West was more attention for itself. Furthermore, it did not want to be displaced or side lined, as *The Economist* observed, "All Russia wants from the West is...respect".<sup>52</sup>

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<sup>51</sup>Independent International Commission in Kosovo. *Kosovo Report: Conflict, international response, lessons learned*, (Oxford University Press, New York, 2000) p.181

<sup>52</sup> "It disagrees about Kosovo. Ah, Yes", *The Economist*, (Vol. 350, No. 8112, 27 March 1999), p. 30

As the recent history has shown, internal violence tends to be no longer an internal affair of a sovereign state but of the international community as a whole. In the new normative practice, the basic human rights tend to be largely defined by the West as universal principles, transcending sovereignty, which is no longer inviolate. The examples of the recent past, like for instance, Milosevic's token sovereignty over Kosovo, Saddam Hussein's over Iraqi skies or Muammar Ghaddafi's over Libyan skies clearly elaborate the point.

As far as the issue of sovereignty is concerned, Segbers, Raiser and Warkalla note that the 'Kosovo factor', also infringed upon the sovereignty of Western countries,

"by subjecting their alleged national interests to supranational purposes - NATO's search of action and leadership, preserving the Transatlantic relationship, shaping European Security and Defence Identity as well as Common Foreign and Security Policy - and to transnational technologies....[where] the leading actors were not states, (with a possible exception of the US), but institutions."<sup>53</sup>

Therefore, one can argue that the European governments were ready to accept the US pressure for military intervention because they mainly feared that the humanitarian catastrophe in Kosovo would lead the EU to accommodate the new flood of refugees.

About twelve years later, after the 1999 Kosovo war, NATO intervened on humanitarian grounds again, but this time in the African continent, against Libya. NATO member states emphasized humanitarian concerns about the imminent threat by Libyan government forces. NATO members argued that the world couldn't stand idly when a tyrant like Ghaddafi terrorizes its own people. While the principle of humanitarian intervention signifies the beginning of a new world order, Kosovo will be placed in history as the first war fought by NATO for the sake of human rights principles, not for the sake of self-defence.

The future of humanitarian intervention is rather uncertain. A New York Times columnist Steven Erlanger while discussing the US secondary role in NATO's intervention in Libya remarks that now we have "the "responsibility to protect" the new mantra, replacing Kosovo's "humanitarian intervention." Both are debatable, given the failure to intervene in the separatist Russian

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<sup>53</sup> Segbers K., Raiser S., & Warkalla B., (1999) *After Kosovo: A Political Science Symposium – Perspectives from Southern Italy*, Berlin: Osteuropa-Institut der Freien Universität Berlin p.34

republic of Chechnya then and Syria [now]...”<sup>54</sup> Selective intervention may not be suitable for international reputation but still, is an improvement from where we were before. There is a famous proverb “better something than nothing”, thus better intervening somewhere than nowhere.

## 6. Conclusion

This research paper addresses the interaction among three dimensions in the context of the new world order – Security Council actions, International Law, and International relations vis-à-vis NATO intervention in Kosovo. This study established that UN Security Council failed to present a united front in the wake of an international tragedy, while this disunity provided an opportunity for NATO to advocate its normative values and affirm the West’s supreme global role. While there are opposing views with regards to interventional approach, there is a general sense of acknowledgment that the human values take precedence over the Westphalian sense of sovereignty.

An important lesson learned from the NATO intervention in Kosovo case is that sovereignty and human rights are not to be taken for granted. They are connected to the state and established in international law, but have no moral or historical basis. Selective military interventions in particular humanitarian crisis (while staying indifferent on others similar cases) may blur promising mission of the doctrine of humanitarian intervention. Syrian innocent civilians are every day facing cruelty and death at the hands of Assad dictatorship regime but neither Security Council nor the Western alliance are showing any particular interest in humanitarian intervention.

The Security Council and the International Law as an institution, have power and authority but also moral responsibility for the entire global community. The actors behind such institutions need not balance self interests vis-à-vis international humanitarian tragedies, but act ethically and consciously in order to meet the goals of their founding fathers. Thus, still, there is a lot of work to be done, and that in good faith for the benefit of humanity. Acting ethically, responsibly and decisively is the key for future humanitarian interventions to gain further respect and endorsement, and not merely acting selectively or for particular economic or political gains.

The NATO intervention in Kosovo, however, despite disunity at the Security Council, and the related debates regarding the legality of such intervention, should not be seen as a mere intervention, but as a pillar contributing to the development of the promising norm “Responsibility to Protect”, potentially conducive to whole international community.

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<sup>54</sup> Eralinger S., *Libya’s Dark Lesson for NATO*, *New York Times* (September 4, 2011), p.SR4

Altogether, developing an international multifaceted strategy with regards to humanitarian intervention may not be easy, as various challenges exist. However, this should not prevent global powers and institutions to endeavor and explore ways towards achieving desired results. The outcomes of such strategy still may, sometimes cause short-term discomfort, but very likely will restore confidence worldwide and offer a bright prospect for the common future. Time will tell how much efforts and resources will be attributed in this ethical direction.



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